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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

IN RE WESTERN STATES WHOLESALE
NATURAL GAS ANTITRUST
LITIGATION

) MDL Docket No. 1566

) Base Case No. 2:03-cv-01431-RCJ-PAL

THIS DOCUMENT RELATES TO:

Learjet, Inc., et al. v. ONEOK Inc., et al.

) Case No. 2:06-cv-00233-RCJ-PAL

*Heartland Regional Medical Center, et al. v.
ONEOK Inc., et al.*

) Case No. 2:07-cv-00987-RCJ-PAL

**ORDER PRELIMINARILY CERTIFYING SETTLEMENT CLASSES, APPROVING
CLASS SETTLEMENT, APPROVING CLASS NOTICE AND SETTING DATE FOR
FAIRNESS HEARING**

The motion of the plaintiffs in above-captioned actions (the “Actions”) for preliminary approval of the terms and conditions (the “Settlements”) in the following Settlement Agreement (collectively, the “Agreement”) has come before this Court:

- (i) the Class Action Settlement Agreement dated February 15, 2019 entered into between the plaintiffs in the Actions and defendants The Williams Companies, Inc., Williams Merchant Services Company, LLC (f/k/a Williams Merchant Services Company, Inc.), and Williams Gas Marketing, Inc. (f/k/a Williams Power Company, Inc. and Williams Energy Marketing & Trading) (collectively “Williams”); Vistra Energy Corp. (as successor in interest to Dynegy Illinois Inc. and Dynegy GP Inc.), Dynegy Power Marketing, LLC (as successor in interest to DMT G.P. L.L.C.), and Dynegy Marketing and Trade, L.L.C. (collectively, “Dynegy”); and e prime, Inc. and Xcel Energy, Inc. (collectively, “e prime,” and collectively along with Williams and Dynegy, the “Settling Defendants”).

1 Plaintiffs in the Actions and the Settling Defendants are hereinafter referred to collectively as
2 the "Parties."

3 Plaintiffs in the Actions filed their motion for preliminary approval on February 19, 2019.
4 Any opposition to the motion was due by March 5, 2019, and no opposition was filed to date. No
5 formal hearing is required at the preliminary approval stage. *See Harris v. U.S. Physical Therapy,*
6 *Inc.*, No. 2:10-CV-01508-JCM-VCF, 2012 WL 3277278, at *4 (D. Nev. July 18, 2002).

7 The Court, after carefully considering the motion and all papers filed and proceedings held
8 herein, including the Agreement and proposed Notice Plan, for good cause **HEREBY FINDS AND**
9 **ORDERS THE FOLLOWING:**

10 1. Plaintiffs include Learjet, Inc., Topeka Unified School District 501, Heartland
11 Regional Medical Center, Prime Tanning Corp., and Northwest Missouri State University
12 (collectively hereinafter, "Plaintiffs"), both individually and on behalf of proposed settlement classes
13 of industrial and commercial purchasers of natural gas for their own use or consumption in the States
14 of Kansas and Missouri, as more particularly defined in Paragraph 3 of this Order, and other
15 affiliated Releasors defined in the Agreement, along with the Settling Defendants and other affiliated
16 Releasees as defined in the Agreement.

17 2. The Agreement are incorporated by reference in this Order. All terms which are
18 defined in the Agreement and used but not otherwise defined herein shall have the meanings
19 ascribed to them in the Agreement.

20 3. For purposes of determining whether the Agreement should be preliminarily
21 approved, the Court conditionally certifies, for purposes of settlement only, pursuant to Rules 23(a)
22 and (b)(3) of the Federal Rules of Civil Procedure 23(b)(3), the Classes defined as follows:

23 (a) **"Kansas Class" means:**

24 All industrial and commercial direct purchasers of natural gas for their
25 own use or consumption during the period from January 1, 2000
26 through October 31, 2002, and which gas was used or consumed by
27 them in Kansas. Excluded from the Class are (a) entities that
28 purchased natural gas for resale (to the extent of such purchase(s) for
resale); (b) entities that purchased natural gas for generation of
electricity for the purpose of sale (to the extent of such purchase(s) for

1 generation); (c) defendants and their predecessors, affiliates, and
2 subsidiaries; (d) the federal government and its agencies; and (e)
3 Reorganized FLI, Inc. (f/k/a Farmland Industries, Inc.).

4 For purposes of the Kansas Class definition, a “direct purchaser”
5 means an industrial or commercial entity that bought natural gas for its
6 own use or consumption directly from any of the defendants in the
7 Actions, or from a seller other than a local distribution company.

8 (b) “Missouri Class” means:

9 All industrial and commercial direct purchasers of natural gas for their
10 own use or consumption during the period from January 1, 2000
11 through October 31, 2002, and which gas was used or consumed by
12 them in Missouri. Excluded from the Class are (a) entities that
13 purchased natural gas for resale (to the extent of such purchase(s) for
14 resale); (b) entities that purchased natural gas for generation of
15 electricity for the purpose of sale (to the extent of such purchase(s) for
16 generation); (c) defendants and their predecessors, affiliates, and
17 subsidiaries; (d) the federal government and its agencies; and (e)
18 Reorganized FLI, Inc. (f/k/a Farmland Industries, Inc.).

19 For purposes of the Missouri Class definition, a “direct purchaser”
20 means an industrial or commercial entity that bought natural gas for its
21 own use or consumption directly from any of the defendants in the
22 Actions, or from a seller other than a local distribution company.

23 4. “Midwest Classes” means, collectively, the Kansas Class and the Missouri Class.

24 5. “Class Period” means, with respect to each of the Midwest Classes, the period from
25 January 1, 2000 through October 31, 2002.

26 6. The Court preliminarily finds that the Settlements set forth in the Agreement: (i)
27 resulted from extensive, good-faith, arm’s-length negotiations between the Parties, conducted after
28 Class Counsel as defined herein had conducted adequate investigation and discovery; and (ii) are
sufficiently fair, reasonable and adequate to the Midwest Classes to warrant providing notice in
accordance with the Notice Plan described in the Motion for Preliminary Approval and thereafter
conducting the final Fairness Hearing as described below.

7. The Actions are, for settlement purposes only, certified as class actions against the
Settling Defendants pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure for

1 each and all of the Midwest Classes and with respect to the Class Period. Certification for settlement
2 purposes is appropriate because:

3 a. The Court preliminarily finds that the requirements of Rules 23(a) and (b)(3) of the
4 Federal Rules of Civil Procedure are met in that:

5 (i) The Plaintiffs and Settling Defendants have agreed by virtue of the Agreement
6 and for purposes of the settlement class only that the Midwest Classes are so
7 numerous that joinder of all members is impracticable;

8 (ii) The Plaintiffs and Settling Defendants have agreed by virtue of the Agreement
9 and for purposes of the settlement class only that the Plaintiffs' claims against
10 the Settling Defendants and the defenses thereto present questions of law or
11 fact common to the Midwest Classes that predominate over questions
12 affecting individual members of the Midwest Classes;

13 (iii) The Plaintiffs and Settling Defendants have agreed by virtue of the Agreement
14 and for purposes of the settlement class only that the claims against the
15 Settling Defendants brought by the Plaintiffs in the Actions, as industrial and
16 commercial purchasers of natural gas for their own use and consumption
17 during the Class Period, are typical of the claims of, or defenses to the claims
18 of, members of the Midwest Classes against the Settling Defendants;

19 (iv) The Plaintiffs and Settling Defendants have agreed by virtue of the Agreement
20 and for purposes of the settlement class only that Plaintiffs and Class Counsel
21 for the Midwest Classes have fairly, adequately and vigorously represented
22 the interests of the Midwest Classes as respects claims against the Settling
23 Defendants;

24 (v) The Plaintiffs and Settling Defendants have agreed by virtue of the Agreement
25 and for purposes of the settlement class only that the certifying the Midwest
26 Classes for purposes of settlement is superior to others method for the fair and
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1 efficient adjudication of the controversy in the Actions as against the Settling
2 Defendants; and

3 (vi) Manageability for trial purposes is not an issue and need not be considered in
4 determining whether to certify the Midwest Classes herein for purposes of
5 settlement. *See Amchem v. Windsor*, 512 U.S. 591, 619 (1997).

6 8. Pursuant to Fed. R. Civ. P. 23(g), for settlement purposes, Polsinelli PC, McCallister
7 Law Group, LLC, and Barry Law Offices, LLC are preliminarily appointed as co-counsel for the
8 Kansas Class; and Polsinelli PC and Barry Law Offices, LLC are preliminarily appointed as co-
9 counsel for the Missouri Class (collectively, "Class Counsel"). Learjet, Inc. and Topeka Unified
10 School District 501 are preliminarily appointed as representatives for the Kansas Class; and
11 Heartland Regional Medical Center, Prime Tanning Corp., and Northwest Missouri State University
12 are preliminarily appointed as representatives for the Missouri Class.

13 9. A.B. Data Ltd. is preliminarily appointed as Settlement Administrator.

14 10. The Court has reviewed the proposed Long and Short Form Class Notice(s) submitted
15 as Exhibits 5-6 to the Motion for Preliminary Approval and preliminarily approves such notices as to
16 form and content. Class Counsel and/or the Settlement Administrator shall cause Class Notice to be
17 disseminated in the manner provided in the Notice Plan described in the Motion for Preliminary
18 Approval (the "Notice Plan") within 30 days after the entry of this Order. The costs associated with
19 providing class notice shall be borne as set forth in the Agreement, including the provisions thereof
20 addressing the allocation of such costs in the event that the Settlements do not become final. The
21 Court preliminarily finds that the form(s) and method(s) of giving notice of the Settlements are
22 reasonably certain to inform the absent members of the Midwest Classes, are the best notice that is
23 practicable under the circumstances, and constitute valid, due and sufficient notice to all members of
24 the Midwest Classes in compliance with the requirements of the Federal Rules of Civil Procedure
25 and of due process under the United States Constitution, and the requirements of any other
26 applicable rules or laws.

11. A final Fairness Hearing is scheduled for August 5, 2019, at 9:00 AM a.m. in Courtroom 4B of this Court, located at 333 S. Las Vegas Blvd., Las Vegas, NV 89101. At the Fairness Hearing, the Court will consider and/or determine, among other things: (i) whether to finally certify for settlement purposes the Midwest Classes as against the Settling Defendants; (ii) whether to finally approve the Settlements as fair, reasonable and adequate; (iii) whether the Notice Plan and Class Notice(s) provided complied with the Federal Rules of Civil Procedure and due process; (iv) whether to enter the Final Order and Judgment approving the applicable Settlements in the form(s) attached to the respective Agreement; and/or (v) whether to grant the Fee and Expense Application(s) submitted by Class Counsel and/or the applications for incentive award(s) to Plaintiffs and, if so, the amounts thereof to be awarded out of the Settlement Fund(s). The Court reserves the right to approve the Settlements at or after the Fairness Hearing and to do so with such modifications as may be consented to by the applicable Parties and without further notice to the members of the Midwest Classes.

12. All papers supporting final approval of the Settlements (other than papers that may be filed by one of the Parties in response to requests for exclusion or objections as described below), shall be filed no later than twenty-one (21) days before the Fairness Hearing. The Fairness Hearing may be postponed, adjourned or rescheduled by order of the court without further notice to the members of the Midwest Classes, other than that which may be posted on the Court's website.

13. The Court further approves the procedures for prospective members of the Midwest Classes to exclude themselves from (*i.e.*, opt out of) or object to, the Settlements, as set forth in Agreement and in the Class Notice(s).

14. In particular, any person or entity who seeks to opt out of the Midwest Classes must submit a timely and valid written request for exclusion in accordance with the Agreement. As a result of the release and as provided in the Agreement, a prospective Class Member seeking to opt out must request exclusion from: (i) all of the Midwest Classes to which the person or entity requesting exclusion belongs or may belong (*i.e.*, it is not permitted to exclude oneself from the Kansas Class but remain in the Missouri Class, etc.); and (ii) all of the Settlements that are the

1 subject of the Class Notice (for example, it is not permitted to exclude oneself from the settlement
2 with one of the Settling Defendants, but remain a class member for purposes of the settlement with
3 any other of the Settling Defendants).

4 15. To be "timely," a request for exclusion must be mailed to Class Counsel or to the
5 Settlement Administrator at the address(es) provided in the Class Notice and postmarked (or mailed
6 by overnight delivery) no later than twenty-one (21) days prior to the date of Fairness Hearing. To
7 be "valid," a request for exclusion must also: (i) state the name, address, and phone number of the
8 person or entity seeking exclusion; (ii) state all trade names or business names and addresses that the
9 person or entity (and any of his, her or its parents, subsidiaries, affiliates, predecessors or assignors
10 who purchased, used or consumed natural gas during the class period) has used during or since the
11 class period; (iii) state, with respect to natural gas purchased, used or consumed within Kansas or
12 Missouri during the Class Period by any of the persons and entities described in sub-parts (i) or (ii)
13 above, an estimate of the total dollar amount paid for such natural gas or an estimate of the total
14 volume of such natural gas, and identify all entities from or through whom such natural gas was
15 purchased; (iv) include the case name of the actions (*In Re Western States Wholesale Natural Gas*
16 *Antitrust Litigation*, MDL No. 1566 (D. Nev.)); (v) include the statement that "[name of person or
17 entity] and all of its parents, subsidiaries and affiliates hereby request to be excluded from the
18 proposed class settlements described in the notice of settlements pertaining to the actions;" and (vi)
19 in the case of an entity, identify the title or position of the person signing on behalf of such entity,
20 state that such person is duly authorized to sign on behalf of such entity, and be signed by such
21 person. A request for exclusion that does not strictly comply with all of the requirements set forth in
22 this paragraph shall be invalid, and every person or entity submitting such an invalid request shall be
23 a Class Member, and shall be bound by the Agreement if they are approved by the Court. Class
24 Counsel shall immediately forward complete copies of all requests for exclusion, as they are
25 received, to counsel for the Settling Defendants (and the Settlement Administrator shall promptly
26 forward to Class Counsel copies of all requests for exclusion, as they are received).

1 16. Within five (5) days after the Court-ordered deadline for timely requests for exclusion
2 from the Midwest Classes, counsel for the Parties shall meet and confer and establish complete lists
3 of: (i) all timely and valid requests for exclusion received as of that date; (ii) all requests for
4 exclusion received that the Parties agree are either not timely or otherwise not valid; and (iii) all
5 requests for exclusion received as to which there is any dispute requiring Court resolution at the
6 Fairness Hearing as to whether such request for exclusion was both timely and otherwise valid.
7 Either of the parties may file papers addressing the issues set forth in this paragraph no later than
8 seven (7) days before the Fairness Hearing.

9 17. Any person or entity that submits a timely and valid request for exclusion shall be
10 excluded from the Midwest Classes, shall have no rights with respect to these Settlements (including
11 no right to share in any recovery obtained pursuant to the Actions) and shall not be permitted to
12 intervene as a party plaintiff in the Actions (but without affecting those persons or entities' ability to
13 exercise their rights under Fed. R. Civ. P. 23 or the Class Notice(s)). Any prospective member of
14 the Midwest Classes who does not timely and validly request to be excluded in the manner set forth
15 above and in the Class Notice and the Agreement will be deemed to have waived all rights to opt out
16 of, and will be deemed a member of, the Midwest Classes for all purposes under the Agreement
17 (including the releases of claims thereunder) and will be bound by all proceedings, orders and
18 judgments in the Actions, including the terms of the Settlements, if approved.

19 18. Prospective members of the Midwest Classes who have not timely and validly
20 requested exclusion and who want to object to the Settlements must do so in accordance with the
21 procedures set forth in the Agreement and in the Class Notice(s). Specifically, any such person or
22 entity must, no later than thirty (30) days before the date set for the Fairness Hearing, both file with
23 the Court and mail to Class Counsel or the Settlement Administrator, and also mail to counsel for the
24 Settling Defendants, a written objection that includes: (i) a notice of intention to appear; (ii) proof of
25 membership in the Midwest Classes; and (iii) the specific grounds for the objection and any reasons
26 why such party desires to appear and be heard, as well as all documents or writings that such party
27 desires the Court to consider. To address the possibility that objectors may fail to mail objections to
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1 both sides, the Parties shall exchange, by email within five (5) days after close of the period for
2 filing objections, pdf copies of all objections received.

3 19. Objections to the Settlements shall be heard, and any papers or briefs submitted in
4 support of said objections shall be considered by the Court (unless the Court in its discretion shall
5 otherwise direct), only if they comply with the objection procedures set forth herein. Counsel for the
6 Parties may file and serve written response(s) to any objection no later than 5 days before the
7 Fairness Hearing. Any member of the Midwest Classes who does not object in the manner
8 prescribed herein and in accordance with the applicable provisions of the Agreement and Class
9 Notice(s) will be deemed to have waived any objections and will be barred from making any such
10 objections in the Actions or in any other action or proceedings related thereto, including in an appeal
11 or collateral attack.

12 20. Any entity which has timely and properly excluded itself from the Midwest Classes
13 shall be permitted to apply to the Court for good cause shown to re-enter the Midwest Classes prior
14 to final approval of the settlement classes. If the Court approves such application, the applying
15 entity will retain the same rights and obligations under the Agreement as the Class Members.

16 21. Pursuant to the stipulation of the Parties, they, and their respective counsel, shall not
17 encourage or solicit, or substantively assist in any way whatsoever, any person or entity to request
18 exclusion from the Midwest Classes.

19 22. Pursuant to the Agreement, up to \$100,000 from the Settling Defendants' payment to
20 the Settlement Fund may be used toward notice to the Midwest Classes and the cost of
21 administration of the Settlement Fund.

22 23. If final approval of the Settlements is not obtained, or if the Settlements do not
23 become final as provided in the Agreement or if the Agreements are otherwise terminated or
24 rescinded pursuant to their terms for any reason, whether entirely or by or with respect to any
25 defendant individually, then: (i) any preliminary or final certification for purposes of settlement of
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1 the Midwest Classes shall be automatically vacated, *nunc pro tunc*;¹ (ii) all other provisions set forth
2 in paragraph 19 of the Agreement shall apply; (iii) any and all amounts paid by Settling Defendants
3 into the Settlement Fund and/or deposited in the Escrow Account (including interest earned thereon)
4 shall be returned to the rescinding or terminating Settling Defendants (subject to the terms of
5 Paragraph 45 of the Agreement) within thirty (30) calendar days, less only disbursements made in
6 accordance with paragraphs 28 and 29 of the Agreement; and (iv) Settling Defendants shall have no
7 further payment obligations pursuant to the Agreement.

8 24. Neither the Agreement nor this Order shall be deemed or construed to be an
9 admission by the Settling Defendants of: (i) any violation of any statute or law or of any liability or
10 wrongdoing whatsoever by the Settling Defendants; or (ii) the propriety of certification of a
11 litigation class in the Actions.

12 25. To facilitate administration of the Settlements pending final approval, the Court
13 hereby stays all proceedings in the Actions as between the Midwest Classes and the Settling
14 Defendants until further order of the Court, except such proceedings as may be necessary either to
15 implement the Settlements or to comply with or effectuate the terms of the Agreement or Fed. R.
16 Civ. P. 23. The Court further enjoins, prior to entry of a final order after the Fairness Hearing, all
17 members of the Midwest Classes from filing any claims, suits or proceedings asserting Released
18 Claims against any of the Settling Defendants unless and until such members of the Midwest Classes
19 have filed valid requests for exclusion in accordance with Paragraphs 14-15 hereof.

20 26. If any deadline in this Order falls on a non-business day, then the deadline is extended
21 until the next business day.

22 **IT IS SO ORDERED.**

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25 ¹ In the event that this provision is implicated based on fewer than all defendants exercising their
26 option under Paragraphs 44 or 45 of the Agreement or their rights under the terms of the
27 Supplemental Agreement to rescind or terminate the Agreement, then any preliminary approval or
28 final certification for purposes of settlement of the Midwest Classes shall be vacated, *nunc pro tunc*,
only as to the rescinding or terminating defendant(s).

1 Dated:

April 22, 2019


Hon. Robert C. Jones
United States District Judge

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